

NORTH DAKOTA COMMISSION ON LEGAL COUNSEL FOR INDIGENTS



Annual Report 2020

Dept. 188

Submitted by:

**Travis W. Finck
Executive Director**

LETTER FROM EXECUTIVE DIRECTOR

It is with immense gratitude to the attorneys, public defender office staff and contractors that I offer the Annual Report of the Commission on Legal Counsel for Indigents. The indomitability of the COVID 19 pandemic has presented a unique circumstance for our agency. Our offices were forced to close, contact with clients became more difficult and case numbers have had a “boomerang” effect of likes we have never seen before. I am proud to report, however, our agency has been able to overcome and continue to meet our mission. This has been accomplished through the tireless dedication of our staff and contract counsel.

As an agency, we have been successful at adapting to the challenges and continuing to provide high quality services in a new era. In the last year, we have utilized our new case management system to move employee’s home whilst being able to stay on top of our files. We have worked with our partners in the justice system to be able to respond to the pandemic without sacrificing client’s rights. We have worked with the Information Technology Department to move our employees to work at home. We have updated the website to provide a better user experience to a new era of clientele. As courthouses reopened, our attorneys have successfully participated in jury trials under the new social distancing procedures while dutifully representing their clients. Our administrative staff has continued to provide support to our attorneys and agency whether working remote or onsite.

The agency has continued to adapt to the needs of the justice system in North Dakota. The Commission recognized a need for a physical office in the North East Judicial District and opened a public defender office in Devils Lake in April of 2020. The office was staffed by reallocating an FTE from the Bismarck-Mandan Public Defender office to be the lead attorney in Devils Lake. The office is also staffed by a non-classified temporary employee serving as an administrative assistant.

In April of 2020, the Commission appointed me as the 3rd Executive Director in the history of the Commission. Our administrative team led by Deputy Director Ewell and Administrative Officer Nelson, have reviewed employee policies and made suggested changes. Further, the Commission members have adopted several new policies that relate to the delivery of services.

There is no certainty where next year will lead us as we move into a new normal, other than we will continue to meet our mission thanks to the commitment to excellence our employees and contractors exhibit every day.

Dated this 19th day of November, 2020.

Respectfully Submitted:



Travis W. Finck
Executive Director

Administration:

Travis W. Finck, Executive Director
Todd N. Ewell, Deputy Director
Aaron Petrowitz, Account Budget Specialist
Brooke Nelson, Administrative Officer
Jennifer Williams, Administrative Assistant III
LeAnn Schmidt, Administrative Assistant II
Jennifer Nagel, Administrative Assistant II

Purpose:

This Annual Report is being filed pursuant to North Dakota Century Code § 54-61-03(f).

MISSION STATEMENT:

The North Dakota Commission on Legal Counsel for Indigents' mission is to provide high quality, professional, and effective legal representation to eligible clients, consistent with the guarantees of the constitutions of the United States and North Dakota, and applicable North Dakota statutes and rules, at reasonable cost to the community.

OPERATION OF THE AGENCY

The North Dakota Commission on Legal Counsel for Indigents (herein after the “Commission”) is governed by North Dakota Century Code 54-61. North Dakota Century Code 54-61-01 provides the Commission was “established for the purpose of developing and monitoring a process for the delivery of state-funded legal counsel services for indigents which are required under the Constitution of North Dakota and the United States Constitution and any applicable statute or court rule. The commission shall provide indigent defense services for indigent individuals determined by the court to be eligible for and in need of those services pursuant to the standards and policies of the commission governing eligibility for such services.”

ELIGIBILITY FOR SERVICES

The Commission has established Guidelines to Determine Eligibility for Indigent Defense Services (herein after “Guidelines”). In order to receive services provided by the Commission, an individual must apply for services, be found to be “indigent”, and it must be a circumstance in which there is a right to counsel. Application for services is made on the Commission’s standard forms. Pursuant to North Dakota Century Code, the Court, or its designee, reviews the application and determines eligibility. Upon a determination the individual is entitled to counsel, the Commission assigns counsel.

Under the Guidelines, indigency is determined by income resources, non-income resources and exceptional factors. The financial guidelines used to assess “income resources” are set at 125% of the federal poverty level as defined by the Federal Department of Health and Human Services. The income of an applicant is considered in conjunction with household size.

Household Size	1	2	3	4	5	6	7	8
Annual Gross Income	15,950	21,550	27,150	32,750	38,350	43,950	49,550	55,150
Monthly Gross Income	1,329	1,796	2,263	2,729	3,196	3,663	4,129	4,596
Weekly Gross Income	307	414	522	630	738	845	953	1,061

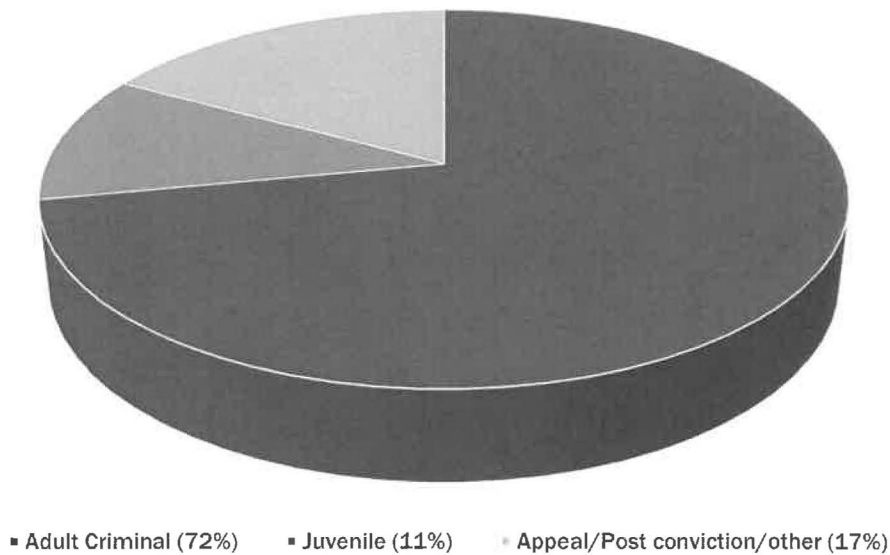
The Guidelines establish “non-income resources” limits as well. “Absent exceptional circumstances, an applicant with equity in real and/or personal property in excess of \$20,000 will not be considered indigent.”

The Guidelines further provide if an applicant for services exceeds income or non-income thresholds, the Court or its designee, may still determine an applicant to be indigent and therefore entitled to services based upon exceptional factors. Exceptional factors include such things as current income prospects, age or physical infirmity, liquidity of the assets, etc.

CIRCUMSTANCES IN WHICH NDCLCI PROVIDES SERVICES

Generally, the North Dakota Commission on Legal Counsel for Indigents would provide services if an applicant is found to be indigent and there is a constitutional, statutory or rule based right to counsel. The majority of the services provided by the Commission are in circumstances in which an individual is charged with a crime and jail time is a possible sanction, in juvenile matters pursuant to the Uniform Juvenile Court Act, Post-Conviction matters brought pursuant to the Uniform Post-Conviction Procedure Act and appeals of those matters.

Case Percentages



COMPLIANCE WITH ELIGIBILITY GUIDELINES

The Commission has always been a good steward of the taxpayer’s money. Our Guidelines provide a standard to review eligibility determinations to ensure compliance. There are abuses to the system, both intentional and unintentional, which the agency seeks to uncover through review. It continues to be the policy of the Commission to seek additional screening and review of applicants by the Court in questionable cases.

The Commission tries to prevent unintentional abuses by providing training to all agency employees on the guidelines. Further, the Director and Deputy Director have provided trainings to individual judges and clerks of court and answered any eligibility questions that have arisen. The Director or a designee meets with all new judges at orientation to cover the guidelines and the requirements for eligibility.

DELIVERY OF SERVICES

The Commission is administered through the Valley City administrative office. The administrative office coordinates the delivery of indigent defense services, assigns counsel, contracts with private attorneys to provide services, staffs the public defender offices, provides support services and provides training to agency attorneys and staff. Attorneys and indigent defense services are provided through full-time state public defenders in eight offices across the state and through private contractors. The Commission appointed the undersigned as Executive Director starting April 1, 2020.

PUBLIC DEFENDER OFFICES

The Commission has eight public defender offices across the state. The Commission’s public defenders take case assignments in the geographical area in which their office is located, and conflict matters in nearby districts or across the state when needed. In fiscal year 2020, the Commission opened a Devils Lake public defender office to be more responsive to the needs of the clients.

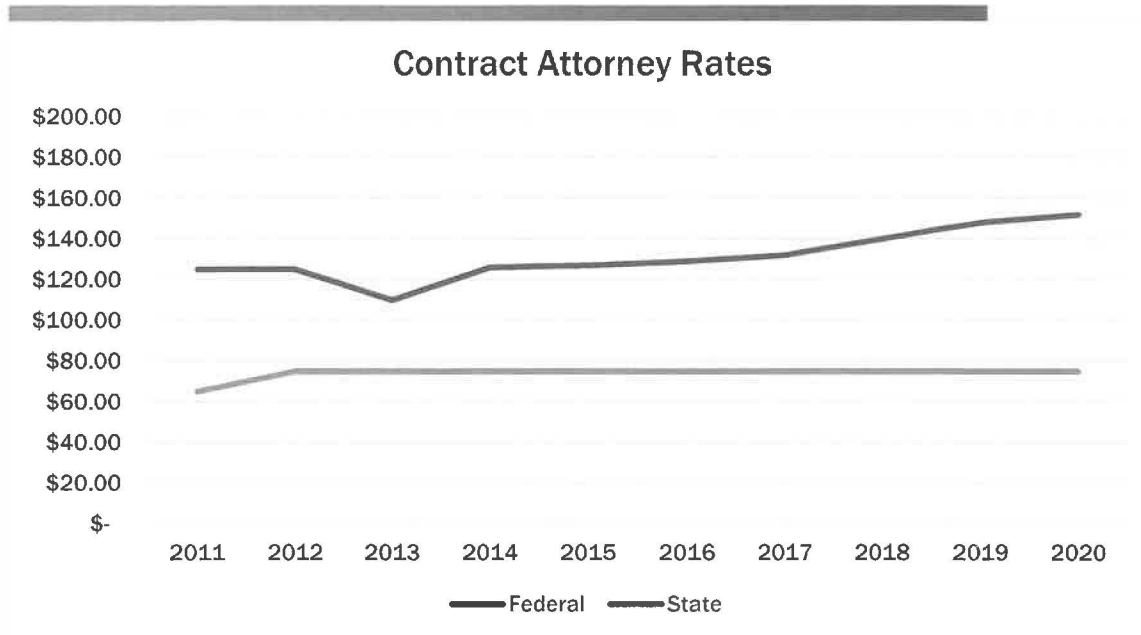
The public defender offices are led by a supervising/lead attorney who reports directly to the Director and Deputy Director. All staff in the public defender offices report to the supervising/lead attorney in that office. Our supervising/lead attorneys are provided below:

- Williston Public Defender Office: Vacant-being advertised
- Dickinson Public Defender Office: Mr. Kevin McCabe
- Bismarck-Mandan Public Defender Office: Mr. Justin Balzer
- Fargo Public Defender Office: Mr. Monty Mertz
- Grand Forks Public Defender Office: Mr. David Ogren
- Devils Lake Public Defender Office: Mr. Beau Cummings
- Minot Public Defender Office: Mr. Eric Baumann
- Minot Adjunct Public Defender Office: Ms. Kalli Hoffmann

Salaries for public defender positions continue to lag behind prosecutors with like responsibilities and job duties. Turnover continues to be high but has slowed a little given the job market depletion due to the pandemic. However, every time an employee leaves, it is costly to the Commission.

CONTRACTORS

The Commission contracts with private attorneys to provide indigent defense representation. This is achieved in the form of monthly contractors who agree to take a specified number of cases for a pre-determined amount of compensation and conflict contracts who take conflict cases on a case assignment by assignment basis. The current hourly rate for contractors is \$75 per hour. The hourly rate for contract attorneys has not been increased since 2012. Meanwhile, we continue to fall further behind the rate paid to federal panel attorneys and continue to be significantly less than salaries earned in the private sector.



North Dakota Century Code section 54-61-02.1 mandates the Commission “shall contract for public defender services at a minimum level of fifty percent of its biennial caseload.” During fiscal year 2020, 68% of case assignments were handled by private contractors with 32% handled by full time public defenders.

FINANCING THE AGENCY

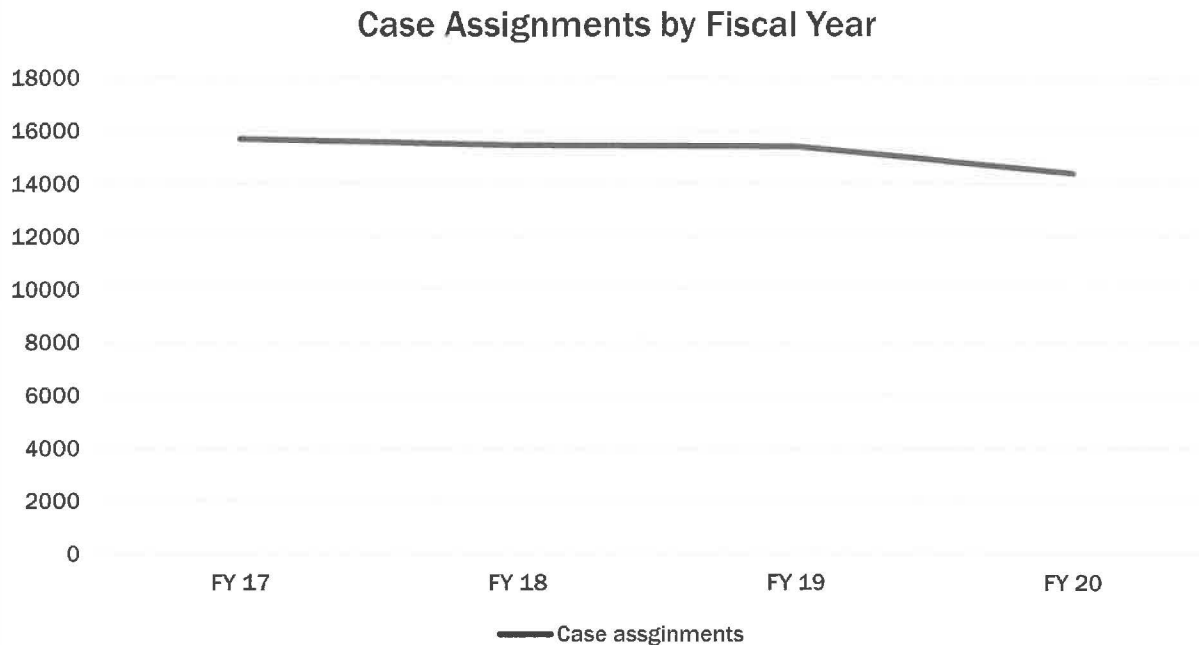
The Commission is an executive branch agency which is funded by the general fund and fund 282, the “Indigent Defense Administration Fund”. Funding for the Commission in the 2019-2021 biennium consists of \$18,384,627 from the general fund, and \$1,990,035 from the Indigent Defense fund. Fund 282 is comprised of two statutorily created fees:

- 1) NDCC 29-07-01.1: Indigent Defense application fee of \$35; and
- 2) NDCC 29-26-22(2): Court administration fee of \$100 assessed to all defendants. The first \$750,000 is deposited in the fund, the next \$460,000, goes to Court facilities improvement, and then the remaining collections are split equally.

During FY20, the Commission received \$150,791.77 from the Indigent Defense Application Fees. The Commission received \$750,000 from the Administration fee. The District Court also has the authority to order reimbursement of attorney fees pursuant to NDCC 29-07-01.1(2). However, those funds are placed in the general fund. NDCC 29-07-01.1(4).

At the close of fiscal year 2020 on June 30, 2020, the Commission had spent \$9,442,092, or approximately 46% of the allocated funds.

The Commission’s expenses are primarily driven by the number of case assignments we handle. The Commission uses the term “case assignment” rather than a case so we can count things consistently across the state, regardless of how a matter may be charged. The Commission has implemented a standard of what constitutes a case assignment for uniformity. Case assignments have decreased over the last fiscal year in comparison to prior years. Last fiscal year, the Commission handled 14,395 case assignments.¹



The COVID 19 pandemic has had a significant effect on the number of case assignments across the state. When the Supreme Court closed jury trials and many law enforcement and prosecutors suspended activities, the number of assignments dropped. However, in the first several months of FY 21 we have seen a boomerang where the numbers have recovered and are now running ahead of average. Thus, the undersigned anticipates increased case assignments for the remainder of the biennium.

¹ The Commission keeps track of case assignments by judicial district. A separate reference chart with case assignments for each judicial district during the fiscal year is attached as exhibit 1.

Another negative impact of the COVID 19 pandemic has been the number of cases an attorney is carrying at one time. The North Dakota Supreme Court in an Emergency Order issued by the Chief Justice, suspended all jury trials for a period from March 16, 2020 through July 1, 2020. During that time, our attorneys continued to work cases. However, those cases that were set for trial were continued and placed on top of the increased new case assignments our attorneys are seeing. This requires our attorneys to be in several court rooms at once and often in several jurisdictions. The Commission has worked with the Court Administrator's Office and the Supreme Court to make sure we can have an attorney at every hearing. However, as funding for contract attorneys and discrepancy in pay between prosecutors and defenders continues to occur, we are coming dangerously close to being unable to provide services in all the cases in which the Court determines someone to be eligible. Further, we have submitted a biennial budget with the 10% reduction as requested by the Governor. However, the Commission did seek a change package to restore 5% back to the budget. Without the restoration, it is extremely likely the Commission will need a deficiency appropriation.

HIGHLIGHTS

The biggest highlight of the agency the last year has been we have been able to survive the pandemic, so far, while continuing to provide high quality legal services to our clients. Our attorneys and staff have had to learn a whole new way of doing business. We have participated in and acclimated to the Court's use of online technology. We have had to learn new ways to effectively communicate with our clients. We had to move most of our work force home and have developed and executed a plan for safe reintroduction of employees to offices to continue to serve the public.

The Commission successfully implemented a case management system in FY 2019 and adopted it to everyday practice in FY 2020. The cloud-based platform allowed us to continue to represent clients in the midst of the pandemic. We have continued to meet our statutory duty to provide training to public defenders and contract attorneys by using online

platforms and provided a training in June 2020 for approximately 100 attorneys.

The Commission has opened an eighth public defender office in Devils Lake, ND. This office was able to be opened without the increase in expense and by repurposing an FTE from a different area of the state.

The Governor proclaimed March 18, 2020 as Public Defender Day in the State of North Dakota.

The Commission was heavily involved in the launching of the pre-trial services pilot program in the state of North Dakota. Our attorneys have stepped up and assisted by providing counsel at initial appearances. Our staff has worked out ways to expedite the assignment of counsel to meet our constitutional mandates.

The Commission's Executive Director and Deputy Director continue to give North Dakota a presence on the national level. The Executive Director has recently been appointed to the National Judicial Task Force to Examine State Court's Response to Mental Illness. The Deputy Director has also assisted with drafting the National Association of Public Defender's proposal on the effective way to use reliable electronic means for court during the pandemic.

GOALS FOR FISCAL YEAR 2021

The Commission will continue to find new ways amidst the pandemic to meet our mission. We will need to utilize technology to better assist in the attorney client experience.

The Commission will need to evaluate increases in compensation. Public Defender staff and contract attorneys continue to be paid less than their counterparts. The Commission did not ask for legislative increases given fiscal climate but will have to find a way to make progress on pay issues.

The Executive Director and Deputy Director will be working on new, updated case load standards to allow attorneys sufficient time to work their cases and avoid burnout.

The Commission continues to pursue ways to get more attorneys involved in indigent defense. We will work to develop strategies to work with partners to recruit talented attorneys and staff to work in public defense.

The Commission executive staff remains committed to be involved in national organizations to bring the best trainings to North Dakota and give North Dakota a presence in National organizations.

The Commission will continue to work with partners in criminal justice reform.

In conclusion, the Commission will continue to build on excellence.

Respectfully submitted this 19th day of November, 2020.



Travis W. Finck
Executive Director

Count of Assignment No				Month/Year Assigned2	Grand Total	
Judicial District	Case Type2	HighestLevel2	HighestLevel	FY20		
EC	Appeal			15	15	
	Other			633	633	
	Criminal	Felony			1,751	1,751
		Misd			1,001	1,001
	Juvenile			381	381	
	Post-Conviction			21	21	
EC Total				3,802	3,802	
NC	Appeal			5	5	
	Other			146	146	
	Criminal	Felony			743	743
		Misd			354	354
	Juvenile			206	206	
	Post-Conviction			6	6	
NC Total				1,460	1,460	
NE	Appeal			4	4	
	Other			155	155	
	Criminal	Felony			408	408
		Misd			328	328
	Juvenile			115	115	
	Post-Conviction			14	14	
NE Total				1,024	1,024	
NEC	Appeal			13	13	
	Other			205	205	
	Criminal	Felony			574	574
		Misd			260	260
	Juvenile			244	244	
	Post-Conviction			8	8	
NEC Total				1,304	1,304	
NW	Appeal			8	8	
	Other			177	177	
	Criminal	Felony			588	588
		Misd			462	462
	Juvenile			105	105	
	Post-Conviction			3	3	
NW Total				1,343	1,343	
SC	Appeal			14	14	
	Other			764	764	
	Criminal	Felony			1,735	1,735
		Misd			865	865
	Juvenile			362	362	
	Post-Conviction			16	16	
SC Total				3,756	3,756	
SE	Appeal			8	8	
	Other			139	139	
	Criminal	Felony			460	460
		Misd			359	359
	Juvenile			124	124	
	Post-Conviction			3	3	
SE Total				1,093	1,093	
SW	Appeal			3	3	
	Other			66	66	
	Criminal	Felony			205	205
		Misd			267	267
	Juvenile			69	69	
	Post-Conviction			3	3	
SW Total				613	613	
Grand Total				14,395	14,395	